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CONTENT

Bill for Introduction into the National Assembly-

PAGE

The Nuclear Regulatory Bill, 2018 939



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THE NUCLEAR REGULATORY BILL, 2018A
ARRANGEMENT OF CLAUSES

Clause

PART I-PRELIMINARY

1. Short title.
2. Interpretation.
3. Object and purpose of the Act.
4. Application of the Act.

PART II-
KENYA NUCLEAR REGULATORY COMMISSION

5. Establishment of the Commission.

6. Functions of the Commission.
7. Powers of the Commission.
8. Composition of the Commission.
9. Director General.
10. Staff of the Commission.
11. Conduct of business and affairs of the Commission.
12. Remuneration of Chairperson and Commissioners.
13. Protection from personal liability.
14. Liability of Commission for damages.
15. Common seal of the Commission.

PART IV-FINANCIAL PROVISIONS

16. Funds for the Commission

17. Financial year.

18. Annual estimates.

19. Accounts and audit.

20. Investment of funds.

PARTIV-
REGULATORY CONTR
OL: NOTIFICATIONS, A
UTHORIZATIONS, INS
PECTIONS AND ENFO
RCEMENT

21. Notifications.

- 22. Authorization.
- 23. Categories for authorization.
- 24. Suspension, revocation or modification of authorization.
- 25. Primary responsibility for safety.
- 26. Right of review of decision.
- 27. Inspection objectives and programme.
- 28. Appointment of inspectors.
- 29. Powers of inspectors.
- 31. Oversight role by the Commission.
-
- 30. Enforcement.

PARTV-RADIATION PROTECTION

- 32. Regulatory control for radiation protection.
- 33. Radiation protection requirements.
- 34. Consumer products.
- 35. Medical exposure.
- 36. Intended radiological exposures with trans-boundary effects.

PART VI-
SAFETY OF RADIATION SOURCES AND FACILITIES

- 37. Control of radiation sources.
- 38. Responsibility for safety of radiation sources.
- 39. National register for radiation sources.
- 40. Report of loss of radiation source.
- 41. Orphan sources.
- 42. Mining and milling licenses.

PART VII- SAFETY OF NUCLEAR FACILITIES AND DECOMMISSIONING

43. Authorization for nuclear facilities.

44. Responsibility for safety of facilities and activities.

45. Site evaluation.

46. Authorization for construction and operations.

47. Extended shutdown for nuclear reactors.

48. Decommissioning requirements.

49. Decommissioning plan.

50. Decommissioning responsibilities.

51. Finances for decommissioning.

PART VIII-DECOMMISSIONING FUND

52. Establishment of the Fund.

53. Sources of funds to the Fund.

54. Administration of the Fund.

55. Functions of the Fund.

56. Other matters to be prescribed.

PART IX- EMERGENCY PREPAREDNESS AND RESPONSE

57. Role of the Commission.

58. Failure by an applicant to develop an emergency preparedness and response plan.

59. Emergency preparedness and response.

60. Implementation of emergency preparedness and response plan.

61. Trans-
boundary nuclear or radiological emergen-
cy.

62. Information to public about plan.

PART X-
TRANSPORTATION OF RADIOACTIVE MATERIAL
L

63. Transport of radioactive material.

64. Offences relating to transport.

65. Duty to exercise reasonable care by carrier.

66. Radiation protection transport plan.

67. Emergency response in transportation.

68. Segregation of material.

PART XI-EXPORT AND IMPORT CONTROLS

69. Controlled Items.

70. Export Licensing Criteria.

71. Import Licensing Criteria.

72. Illicit trafficking.

**PART XII-
RADIOACTIVE WASTE AND SPENT FUEL MANAGEMENT**

73. Scope of radioactive waste and spent fuel management.

74. Responsibility for radioactive waste and spent fuel management.

75. Classification of radioactive waste.

76. Waste management plan.

77. Offences relating to radioactive waste and spent fuel.

78. Collection, segregation and characterization of radioactive waste.

79. Discharge of radioactive waste.

80. Authorization to operate a radioactive waste and spent fuel management facility.

81. Radioactive waste imports.

82. Radioactive waste exports.

PART XIII-SAFEGUARDS

83. Peaceful uses.

84. Applicationofsafeguards.

85. Safeguardinspections.

86. Designationofinspectors.

87. Statesystemofaccountingandcontrolfornuclear material.

88. Informationrequirementsforresearchanddevelopment activitiesrelatedtothenuclearfuelcycle.

**PARTXIV-
NUCLEARSECURITYANDPHYSICALPROTECTION**

89. Threatassessmentprocesses.

90. Primaryresponsibilityforphysicalprotection.

91. Internationalcooperationandassistance.

92. Restrictions.

93. Protectionofconfidentialinformation.

94. Offencesrelatingtonuclearfacilities.

PARTXV-MISCELLANEOUSPROVISIONS

95. Offencesbyemployeesandagents.

96. Generalpenalty.

97. AppointmentofProsecutors.

98. Regulations.

PARTXVI-TRANSITIONALPROVISIONS

99. RepealofCap.243.

100. CommissiontobesuccessoroftheRadiationProtectionBoard.

101. TransferofStaff.

102. SecondmentofStaff.

**SCHEDULE-PROVISIONS ASTO THE
CONDUCTOFTHEBUSINESS
ANDAFFAIRSOFTHECOMMISSION**

THE NUCLEAR REGULATORY BILL, 2018

A Bill for

AN ACT of Parliament to provide for a comprehensive framework for the regulation of safe, secure and peaceful utilization of atomic energy and nuclear technology; the production and use of radiation sources and the management of radioactive waste; the repeal of the Radiation Protection Act and for connected purposes.

ENACTED by the Parliament of Kenya as follows-

PART I- PRELIMINARY

1. This Act may be cited as the Nuclear Regulatory Act, 2018.

Shorthand.

2. In this Act, unless the context otherwise requires

Interpretation.

"activities" means the production, use, import and export of radiation sources for industrial, research and medical purposes; the transportation of radioactive material; the siting, construction, commissioning, operation, and decommissioning of facilities; radioactive waste management activities and site remediation;

"applicant" means a person making an application for an authorization under this Act;

"authorization" means the granting by the Commission of a written permission for an authorized person to perform a specific activity and includes a licence, permit, registration and approval;

"authorized person" means a holder, whether natural or corporate, of a valid authorization for a specified activity;

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to interior security;

"carrier" means any person, organization or government, undertaking the carriage of radioactive material by any means of transport.

transport and includes both carriers for hire or reward and carriers on their own account;

"Commission" means the Kenya Nuclear Regulatory Commission established under section 5;

"consignment" means any package or packages, or load of radioactive material, presented by a consignor for transport;

"consumer product" means a device or manufactured item in which radionuclides have been deliberately incorporated or produced by activation, or which generates ionizing radiation, and which can be sold and made available to members of the public without special surveillance or regulatory control after sale;

"containment" means the methods or physical structures that prevent the dispersion of radioactive substances;

"contamination" means the presence of radioactive substances in or on a material or the human body or other place where they are undesirable or could be harmful or the process giving rise to their presence in such places;

"clearance" means the removal of radioactive material or radioactive objects within authorized activities from any further regulatory control by the Commission;

"clearance levels" means values established by the Commission and expressed in terms of activity

concentrations or total activity, at or below which sources of radiation may be released from regulatory control by the Commission;

"decommissioning" means all steps leading to the release of a facility, other than a disposal facility, from regulatory control other than confirming the decommissioned status of a facility and include the processes for decontamination and dismantling

"Director General" means the chief executive officer of the Commission appointed under section 9;

"discharges" means planned and controlled releases into the environment, as a legitimate practice, within the limits authorized by the Commission, of liquid or gaseous radioactive material that originates from regulated nuclear facilities during normal operations

"disposal" means the emplacement of spent fuel or radioactive waste in an appropriate facility without the intention of retrieval;

"dose" means a measure of the radiation received or absorbed by a target;

"dose limit" means the value of the effective dose or the equivalent dose to individuals from controlled activities that may not be exceeded;

"exemption" means the determination by the Commission that a source or activity need not be subject to some or all aspects of regulatory control on the basis that the exposure (including potential exposure) due to the source or activity is too small to warrant the application of those aspects or that this is the optimum option for protection irrespective of the actual level of the doses or risks;

"export" means the physical transfer, originating from an exporting State, into an importing State, of nuclear or other radioactive material, including sources;

"exposure" means the act or condition of being subject to irradiation;

"facilities" means-

- (a) nuclear facilities or any other location that the authorized person has control over;
- (b) radiation source facilities;
- (c) radioactive waste management facilities and any other premises where radioactive material is produced, processed, used, handled, stored or disposed of, on such a scale that consideration of protection of safety is required;
- (d) a reactor, critical facility, a conversion plant, a fabrication plant, a reprocessing plant, an isotope separation plant or a separate storage installation; or
- (e) any location where nuclear materials in an amount greater than one effective kilogram is customarily used;

"fissile material" means uranium-233, uranium-235, plutonium-239, plutonium-241, or any combination of these radionuclides with the exception of-

- (a) natural uranium or depleted uranium which is unirradiated; and

- (b) natural uranium or depleted uranium which has been irradiated in the reactor only;

"Fund" means the Decommissioning Fund established under section 52;

"import" means the physical transfer, into an importing State or to a recipient of an importing State, originating from the exporting State, of nuclear or other radioactive material including sources;

"incident" means any unintended event, including operating errors, equipment failures, initiating events, accident precursors, near misses or other mishaps, or unauthorized acts, malicious or non-malicious, the consequences or potential consequences of which are not negligible from the point of view of protection or safety;

"intervention" means any action intended to reduce or avert exposure or the likelihood of exposure to sources which are not part of a controlled practice or which are out of control as a consequence of an accident;

"ionizing radiation" for the purposes of radiation protection, means radiation capable of producing ion pairs in biological materials;

"inspection" means a set of activities-

- (a) carried out by the International Atomic Energy Agency inspectors at a facility or a location to verify that the nuclear material subject to safeguards remains in peaceful nuclear activities or is otherwise adequately accounted for, or as may be prescribed by the Commission; or
- (b) carried out by the Commission for the purposes of verifying compliance with the provisions of this Act;

"management" means the administrative and operational activities that are involved in the manufacture, supply, receipt, possession, storage, use, transfer, import, export, transport, maintenance, recycling or disposal of radioactive sources and other radioactive material;

"naturally occurring radioactive material" means radioactive material containing no significant amount of radionuclides altered from natural settings, or present in

that logically enhanced concentrations above background

level due to human activities that may result in a

relative increase in radiation exposures and risks to the

population in the environment

"ionizing radiation": means optical radiation,
frequency radiation, low-frequency electric and

magnetic fields, ultrasonic radiation and any other radiation

, "biological effects";

"notification" means a document submitted to the

person having legal person to notify an intention to

carry out an activity or other use of a source;

"nuclear energy" means any form of energy released
in the course of nuclear fission or nuclear fusion or of any
other nuclear transmutation;

or

"nuclear facility": means any civilian facility where

nuclear material is produced, processed, used, handled or

disposed of,

including: a nuclear installation, premises, nuclear
power plant, research reactor, fuel fabrication plant, fuel storage fac-
ility, enrichment plant, reprocessing
facility or any other facility determined by the

Commission;

"nuclear fuel cycle" means all operations associated with the pro-
duction of nuclear energy, including mining, milling, processing and
enrichment of uranium or thorium;

nuclear reactors;

reprocessing of spent fuel; decommissioning; and any

activity for radioactive waste management and any research
development activity related to any of the foregoing;

"nuclear material" means nuclear fuel, other than

enriched uranium and depleted uranium, capable of

generating energy by a self-sustained chain process of fission, outside a nuclear reactor, either alone or in combination with some other material and radioactive waste;

"nuclear or radiological emergency" means an occurrence, whether or not it is a hazard, which is likely to result in a release of radioactive material or in a significant increase in the level of radiation in the environment;

or

(a) the energy resulting from a nuclear chain reaction or the decay of the products of a chain reaction;

or

(b) radiation exposure;

"nuclear power plant" means a nuclear power reactor and related facilities;

"nuclear science and technology" means nuclear applications, including use of nuclear energy, for exclusively peaceful purposes;

"optimize" means the process of determining what level of protection and safety makes exposures, and the probability and magnitude of potential exposures, as low as reasonably achievable, as required by the International Commission on Radiological Protection System of Radiological Protection, taking into account economic and social factors;

"orphan source" means a radioactive source which is not under regulatory control, either because it has never been under regulatory control or because it has been abandoned, lost, misplaced, stolen or transferred without proper authorization;

"physical protection" means measures for the protection of nuclear material or authorized facilities,

designed to prevent unauthorized access or removal of fissile material or sabotage with regard to safeguards;

"radiation" means and shall include, both ionizing and non-ionizing radiation;

"radiation protection" means the protection of people from the effects of exposure to radiation, and the means for achieving this;

"radiation source" means a radiation generator, or a radioactive source or other radioactive material outside the nuclear fuel cycles of research and power reactors and includes naturally occurring radiation sources, orphan sources and radioactive material exempt from regulatory control;

"radioactive material" means material designated as such by the Commission and subject to regulatory control because of its radioactive nature;

"radioactive waste" means material, in whatever physical form, remaining from activities or interventions and for which no further use is foreseen-

- (a) that contains or is contaminated with radioactive substances and has an activity or activity concentration higher than the level set for Clearance from regulatory requirements; and
- (b) exposure to which is not excluded under applicable regulations;

"radioactive waste management" means all activities, including decommissioning activities that relate to the handling, pre-treatment, treatment, conditioning, storage, or disposal of radioactive waste, excluding off-site transportation and may involve discharges;

"radioactive waste management facility" means a facility and its associated land, buildings and equipment in which radioactive waste is managed;

"research reactor" means a nuclear reactor used mainly for generation and utilization of neutron flux and ionizing radiation for research and other purposes, including experimental facilities associated with the reactor and storage, handling and treatment facilities for radioactive material on the same site that are directly related to safe operation of the research reactor;

"sabotage" means any deliberate act directed against a nuclear facility or nuclear material in use, storage or transport which could directly or indirectly endanger the health and safety of workers, the public or the environment by exposure to radiation or release of radioactive substances;

"safeguards Agreement" means an agreement between Kenya and the International Atomic Energy Agency for the application of Safeguards in connection with the Treaty on the Non-Proliferation of Nuclear Weapons and the Additional Protocol as entered into force on 18th September, 2009;

"safety" means the protection of people, property and the environment against radiation risks, and the safety of facilities and activities that give rise to radiation risks;

"security" means the prevention and detection of, and response to, theft, sabotage, unauthorized access, illegal transfer or other malicious acts involving nuclear or other radioactive material, or their associated facilities;

"source" means anything that may cause radiation exposure by emitting ionizing radiation or by releasing radioactive substances or material and can be treated as a single entity for protection and safety purposes;

"source material" means-

- (a) uranium containing the mixture of isotopes occurring in nature;
- (b) uranium depleted in the isotope 235;
- (c) thorium or any of the foregoing in the form of metal, alloy, chemical compound, or concentrate; and
- (d) any other material containing one or more of the foregoing in such concentration as determined by the International Atomic Energy Agency from time to time;

"spent fuel" means nuclear fuel that has been irradiated and permanently removed from a reactor core;

"spent fuel management" means all activities that relate to the handling or storage of spent fuel, excluding off-site transportation and may involve discharges;

"spent fuel management facility" means any facility or installation the primary purpose of which is spent fuel management;

"storage" means the holding of spent fuel or radioactive waste in a facility that provides for its containment with the intention of retrieval; and

"transport" means all operations and conditions associated with and involved in the movement of nuclear or other radioactive material including the design, manufacture, maintenance and repair of packaging, and the preparation, consigning, loading, carriage including in-transit storage, unloading and receipt at the final destination of loads of such material and packages.

3. The objects and purposes of this Act are to-

- (a) regulate the safe, secure and peaceful development, production, possession, use, storage, transport, transfer, disposal or handling of nuclear and radioactive materials,

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and other apparatus generating ionizing radiation; and

(b) protect persons, property and the environment in relation to nuclear and radioactive material, activities and facilities and other apparatus generating ionizing radiation.

4. (1) This Act shall apply to any person dealing with nuclear or radioactive material, activities or facilities and other apparatus generating ionizing radiation.

(2) The Commission may, subject to the provisions of this Act, exempt any activity, facility or source from the application of this Act.

PART II-

KENYA NUCLEAR REGULATORY COMMISSION

Application of the Act

5. (1) There is hereby established a Commission to be known as the Kenya Nuclear Regulatory Commission.

(2) The Commission shall be a body corporate with perpetual succession and a common seal, and shall in its corporate name be capable of-

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) borrowing money and lending money;
- (d) entering into contracts; and
- (e) performing all other acts for the furtherance of the provisions of this Act.

(3) Except as otherwise provided in this Act, the Commission shall be independent in the performance of its functions and duties and exercise of its powers and shall not be subject to the direction or control of any person or authority.

Establishment of the Commission.

(4) The headquarters of the Commission shall be in Nairobi or such other place as the Commission may, by resolution, determine.

6. The objects and functions of the Commission shall be to-

- (a) **ensure the safe, secure and peaceful use of nuclear science and technology;**
- (b) provide for the protection of persons, property and the environment against the harmful effects of ionizing radiation through the establishment of a system of regulatory control;
- (c) exercise regulatory control over-
 - (i) siting, design, construction, operation, manufacture of component parts and decommissioning of facilities;
 - (ii) nuclear and radioactive materials and facilities; and
 - (iii) any other activities which the Commission may see fit to exercise regulatory control over;
- (d) ensure compliance with the conditions of authorization through the implementation of a system of inspections and enforcement;
- (e) coordinate the fulfillment of national obligations in respect of nuclear safety, security and safeguards;
- (t) co-operate with any relevant international agency by providing any assistance or information required;
- (g) establish appropriate awareness methods and procedures for informing and consulting the public and other interested parties about the regulatory process and the safety, health and environmental aspects of regulated activities including incidents, accidents and abnormal occurrences; and
- (h) perform any other functions in the furtherance of the provisions of this Act.

7. (1) The Commission shall have all the powers necessary for the execution of its functions under this Act and any other written law.

(2) Without prejudice to the generality of subsection

(1), the Commission shall have power to-

- (a) control, supervise and administer all assets in such manner and for such purpose as best promotes the purpose of its

Powers of the C
ommission.

(b) **determine the provisions to be made for its capital and recurrent expenditure and for its reserves;**

(c) receive any grants, gifts, donations or endowments and make legitimate disbursements therefrom;

(d) levy such fees as it may determine necessary;

(e) enter into association with other bodies or organizations within or outside Kenya as may be desirable or appropriate in furtherance of the purpose for which it is established;

(f) open bank accounts for its funds;

(g) invest any of its funds not immediately required for its purposes in the manner provided under section 20;

(h) hold inquiries and gather any relevant information including requisition of reports, records, documents and any information from any source including any State organ and to compel the production of such information where it considers

necessary; and

(i) undertake any other activity that may be necessary for the fulfillment of any of its functions under this Act.

q) The Commission shall, in discharging its mandate under this Act, be guided by the following principles-

(a) protection of persons, property and the environment;

(b) national security;

(c) independence;

(d) responsibility and accountability;

(e) transparency;

(f) cooperation; and

(g) need not be bound by the strict rules of evidence.

8. (1) The Commission shall consist of-

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CompositionoftheCommission.

- (c) the Principal Secretary of the National Treasury or his representative;
- (d) the Principal Secretary of the Ministry responsible for Energy or his representative;
- (e) the Principal Secretary of the Ministry responsible for Health or his representative;
- (f) the Principal Secretary of the Ministry responsible for Education or his representative;
- (g) the Attorney-General or his representative;
- (h) the Director-General, National Intelligence Service;
- (i) a representative of the Kenya Defence Forces;
- (j) the Commissioner-General, Kenya Revenue Authority;
- (k) seven other commissioners appointed by the Cabinet Secretary by virtue of their knowledge and possession of a minimum of ten years experience in matters relating to engineering, law, radiation or nuclear related science, environmental or public safety, or finance; and
- (l) the Director-General, who shall be an *ex-officio* member of the Commission.

(2) The Commission shall appoint its own secretary.

9.(1) There shall be the Director General who shall

Director-General

be the chief executive officer of the Commission appointed by the Commission and whose terms and conditions of service shall be determined by the Commission in the instrument of appointment or otherwise in writing from time to time.

(2) No person shall qualify for appointment under this section unless such person-

- (a) has at least a degree in either, physical science, engineering, law, social sciences or any other relevant field; and
- (b) has at least ten years experience at management level

(3) The Director General shall, subject to the directions of the Commission, be responsible for the day-to-day management of the affairs and staff of the Commission.

10. The Commission may appoint such professional and technical staff for the proper discharge of the functions of the Commission under this Act on such terms and conditions of service as the Commission may determine on the advice of the Salaries and Remuneration Commission.

11. The conduct and regulation of the business of the Commission shall be as provided in the Schedule, but subject thereto, the Commission shall regulate its own procedure and the procedure of any of its committees thereof.

12. The Commission shall pay the Chairperson and its

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may determine in consultation with the Cabinet Secretary.

13. Notwithstanding anything done by a member of the

Protection of

Commission or any officer, employee or agent of the Commission.

Commission shall, if the matter or thing is done *bonafide* for executing the functions, powers or duties of the Commission, render the member, officer, employee or agent or any person acting by his directions personally liable to any action, claim or demand whatsoever.

14. The provisions for this Act shall not relieve the Commission of the liability to pay compensation or damages to any person for any injury to him, his property or any of his interests caused by the exercise of any power conferred by this Act or by the failure, whether wholly or partially, of any works.

15. (J) The common seal of the Commission shall be kept in such custody as the Commission may direct and shall not be affixed to any instrument or document, except as authorized by the Commission.

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- (3) The common seal of the Commission, when affixed to a document and duly authenticated shall be judicially and officially noticed and unless and until the contrary is proved, any necessary order or authorization by the Commission under this section shall be presumed to have been duly given.

PARTID-FINANCIALPROVISIONS

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(3) The annual estimates shall be approved by the Commission before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary for approval..

(4) No expenditure shall be incurred for the purposes of the Commission except in accordance with the annual estimates approved under subsection (3), or pursuant to an authorization of the Commission given with prior written approval of the Cabinet Secretary.

19. (1) The Commission shall cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the Commission.

(2) Within a period of three months after the end of a financial year, the Commission shall submit to the Auditor-General the accounts of the Commission for that year together with-

(a) a statement of income and expenditure during the year; and

(b) a statement of the assets and liabilities of the Commission as on the last day of that year.

Accounts and Audits.

(3) The annual accounts of the Commission shall be prepared, audited, and reported upon in accordance with the Public Audit Act, 2015.

No. J4 of 2015.

20. The Commission may invest any of its funds in

nsecurities, trust funds or banks which the National Treasury may from time to time; and, prove for that purpose.

Investment of funds.

PART IV - REGULATORY CONTROL:

1. NOTIFICATIONS, AUTHORIZATIONS, INSPECTIONS AND ENFORCEMENT

21. (1) A person who intends to engage in any activity shall submit a notification to the Commission of his intention to carry out such activity.

(2) The Commission shall prescribe by regulations a notification regime prescribing the form, manner and time limits within which the notifications shall be made.

Notifications.

22. (1) A person shall not carry out an activity unless the activity has been-

Authorization.

(a) specifically authorized by the Commission; or

(b) exempted, wholly or partially from regulatory control, by the Commission.

(2) An application for authorization under this section shall be in the prescribed form and manner and shall include any information and documents as required by the Commission, including-

- (a) a detailed description of the activity, nuclear or radioactive material, its intended use and the facility in which it shall be used;
- (b) a description of the radiation protection measures of individuals and for physical protection of the nuclear or radioactive material or facility;
- (c) a plan for the management of radioactive wastes resulting from the use of nuclear or radioactive material; and
- (d) proof of payment of prescribed fees.

(3) The Commission may issue an authorization

- (a) only for activities that can be conducted in a manner that adequately ensures the protection of people, property and the environment; and
- (b) upon such other terms and conditions as may be prescribed.

(4) A person who contravenes this section commits an offence and is liable upon conviction to a fine not exceeding five (5) millions shillings or imprisonment for a term not exceeding five (5) years or to both.

23. (1) The Commission may establish categories of authorization for any activity for a specified period and subject to the terms and conditions specified in the authorization.

(2)

The Commission may require an authorized person to submit such reports as the Commission may from time to time request.

24. (1) An authorization issued under this Act may be suspended, modified, or revoked by the Commission in the event of-

- (a) a contravention of this Act;
- (b) violation of the terms and conditions of the authorization; or

Categoriesforauthori?.ation.

Suspension,revocationormodificationofanauthorization.

(c) any circumstance where the Commission determines that continued activity under the authorization would pose a risk to people, property or the environment.

(2) A responsibility arising out of an authorization under this Act shall not be transferred unless with the written approval of the Commission.

(3) An authorization shall cease to be valid when any time limit prescribed under the provisions of this Act lapses or the terms and conditions of the authorization expire.

25, A person authorized to conduct an activity shall

have the primary responsibility for the safe and secure conduct of the activity and for ensuring compliance with this Act and applicable regulations,

26. (1) A person aggrieved by a decision of the Commission under this Part shall have the right to apply to the Commission for a review of the decision,

(2) An application for review under subsection (1) shall be filed with the Commission within thirty days of the communication of the decision and shall state the factual,

legal, and procedural ground on which it is based.

(3) The Commission shall, within sixty days of receipt of an application for review, make a finding and communicate the same to the authorized person.

(4) An application for review under this section shall have the effect of suspending the decision only by the Commission.

(5) No finding under this section stops an applicant from

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(b) relevant documents. In this case, the documents are relevant to the investigation of the alleged activities of the defendant, and the information contained therein is not otherwise available to the public. The documents are being withheld from public release in order to protect the integrity of the investigation and the privacy of the individuals involved. The documents are being withheld from public release in order to protect the integrity of the investigation and the privacy of the individuals involved.

III-

(c) persons engaged in authorized activities possess

thecompetence necessary for their functions;

(d) deficiencies and deviations from authorization requirements are remedied without undue delay; and

(e) lessons learnt from authorized activities are communicated to other authorized persons, the Commission and any other relevant persons.

(2) The Commission shall establish a planned and systematic inspection programme consisting of routine and reactive inspection that are announced and unannounced to monitor compliance with this Act and all applicable regulations.

28. (1) The Commission shall, by notice in the Gazette appoint persons of such qualifications as may be prescribed, to be inspectors for the jurisdictions specified in the notice of appointment.

(2) An inspector appointed under subsection (1) shall

(a) carry out inspections of facilities and activities so as to-

(i) monitor compliance with the provisions of this Act and all applicable regulations; and

(ii) compile and submit reports of inspection to the Commission; and

(b) perform such other functions as the Commission may deem necessary.

29. An inspector appointed under this Act may-

(a) enter any facility which he has reason to believe is necessary in order to ascertain whether the

provisions of this Act are being complied with;

(b) be accompanied by a duly authorized employee of the Commission;

(c) take any equipment or material required for any purpose for which power of entry is being exercised;

Powers of inspectors.

Appointment of inspectors.

(e) interview the licensee or any of its employees;

(f) direct that any part of the facility which he has power to enter, or anything in such facility, be left undisturbed for as long as is reasonably necessary for the purpose of any inspection;

(g) take appropriate samples, articles or substances found in any facility which he has power to enter; and

(h) request the production of any records which may be required to be kept under this Act.

30.(1) Where an inspector determines that an activity is being conducted in violation of the provisions of this Act or that the activity poses an immediate risk of injury or damage to persons, property or the environment, the inspector may—

(a) immediately order the temporary suspension of the activity;

(b) order the authorized person to prohibit workers who do not meet applicable requirements from engaging in the activity;

(c) order that nuclear material, radioactive material or any other apparatus generating ionizing radiation originating from a suspended activity or facility be safely and securely stored; and

Enforcement.

(d) take any other action as may be prescribed under the provisions of this Act.

(2) An order issued by an inspector under subsection (1) shall continue to be in force unless—

(a) withdrawn by the inspector;

(b) reversed or modified by the Commission; or

(c) modified or altered through an administrative or judicial review.

(3) An inspector who undertakes any enforcement action specified in subsection (1) shall prepare a report indicating the reasons for his action and identifying the evidentiary basis for his findings including measurements, test samples, explanations and any other relevant information.

(4) The report prepared under subsection (3) shall be made available to the authorized person who shall have the right to submit explanations or objections within the time specified by the Commission.

(5) The Commission may prescribe the circumstances under which the prior approval of the Commission shall be obtained by an inspector prior to taking any of the actions specified in subsection (1).

31. (I) Upon receipt of an inspection report under section 28, the Commission shall-

- (a) where the report is accompanied by objections, review the objections and issue such orders as may be necessary; and
- (b) ensure that relevant measures have been taken against the persons contravening the provisions of the Act.

(2) The persons subject to enforcement actions shall take necessary measures to-

- (a) remedy compliance as directed by the Commission or as soon as practically possible; and
- (b) prevent recurrence.

(3) The Commission may, where the case presents an immediate safety or security hazard to people, property or the environment, require the authorized person to suspend its activities until the situation has been remedied.

Oversight role by the Commission.

PART IV - RADIATION PROTECTION

32. (I) A licensee shall-

- (a) justify every radiation practice and prove that its benefits outweigh the health detriment to the people and the environment;
- (b) optimize the radiation protection of people and the environment in such a way that exposures are as low as reasonably achievable, taking into account economic and social factors;
- (c) put mechanisms in place to ensure dose limits are not exceeded for practices where such limits apply; and

Regulatory control for radiation

protection.

(d) ensure the protection of person
from the harmful effects of exposure
to ionizing radiation.

(2) Exemptions from regulatory
control under

subsection (1) shall be based on the criteria that—

(a) the radiation is not sufficient to
cause

become regulatory concern;

(b) the collective radiation dose limit
is not sufficient to warrant regulatory
control; and

(c) the source is not considered to be inherently

safe with no likelihood of creating situations that
could result in a failure to meet the criteria in paragraph (1)(a) or (b),

33. (1) An authorization of an activity by the Commission
under this Act shall be subject to the radiation protection requirements
outlined in subsection (2).

(2) The authorized person shall—

(a) establish and maintain a program of monitoring of the
radiation protection justification, optimization and limitation;

(b) determine the necessary protection and safety of workers,
patients, and the public by keeping doses below the relevant
threshold and following the steps that are taken to minimize
dose to the population, at present and in the future;

(c) plan and implement the technical and management
measures necessary to ensure adequate

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the dose limits established by the Commission and
monitor the radiation exposure of workers;

(f) *to* allocate human and financial resources to

conduct the proposed activity in a manner that

to ensure safety and security;

(g) *not* modify the conduct of any authorized activity

in a manner that could affect the protection of

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- (h) provide upon request by the Commission, all information considered to be necessary by the Commission,

34(I) No consumer products shall be offered to the
public unless their use by members of the public has been
justified and either their use has been exempted or their provision to
the public has been authorized by the Commission.

(2) Upon receipt of an application for authorization under subsection 1, the Commission shall-

- (a) **verify compliance with the provisions of this Act**

Consumer
product 6.

and applicable regulations;

- (b) verify the assessments and selection parameters presented by the applicant;

- (c) determine whether the end use of the product can

be exempted; and

- (d) if necessary, authorize the provision to the public of the consumer products subject to specific conditions of authorization or exempt the consumer product,

(3) A person who imports consumer products, as exempt products shall ensure the products are packaged and labelled in a manner as prescribed by the Commission.

(4) A person who contravenes this section commits an offence and is liable upon conviction to a fine not exceeding five (5) millions shillings or to an imprisonment for a term not exceeding five years, or to both.

35..(t) Every authorized person shall ensure that no

Medicine: ii. "structure.

person, whether symptomatic or asymptomatic, incurs

medical exposure unless-

- (a) the radiological procedure has been requested by a referring medical practitioner;

- (b) responsibility has been assumed for ensuring protection and safety; and
- (c) the person subject to the exposure has been informed of the expected benefits and risks and has consented to the exposure.

(2) Every authorized person shall ensure that all practicable measures have been taken to minimize the likelihood of an unintended or accidental medical exposure.

(3) Where an unintended or accidental radiation exposure occurs, the authorized person shall implement corrective action and report to the Commission.

(4) A person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding one year or to both.

36. (1) Where an authorized person undertakes an activity likely to cause public exposure to neighboring States, the authorized person shall notify the Commission of the intended activity.

(2) Upon receipt of a notification under subsection (1), the Commission shall notify the neighbouring State of the intended activity.

(3) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding ten million shillings or to an imprisonment for a term not exceeding ten years or to both.

PART VI-
SAFETY OF RADIATION SOURCES AND FACILITIES

37. The Commission shall-

- (a) establish a system of control over radiation sources to ensure they are safely managed and securely protected during and at the end of their useful lives; and
- (b) prescribe a categorization of sources based on the potential injury to people and the environment.

38. An authorized person shall bear the primary responsibility for ensuring the safe and secure use of radiation sources.

39. The Commission shall-

- (a) establish and maintain a national register of radiation sources;
- (b) establish the categories of radiation sources required to be included in the national register; and

Intended radiological exposures with transboundary effects.

Control of
radiation sources.

Responsibility for
radiation sources.

:-lational register for radiation **sources.**

- (c) **ensure protection of information contained in the**
- national register to guarantee the safety and security of these sources as appropriate.
40. An authorized person shall promptly report to the Commission any-
- (a) loss of control over radiation sources, or any other situation; or
 - (b) incident in connection with a radiation source that may pose a significant risk of radiological injury to persons or substantial damage to property or the environment.
41. The Commission shall-
- (a) establish a system for recovery and safe management of orphan sources;
 - (b) be responsible for coordinating the response to radiological emergencies as a result of orphan sources;
 - (c) bear the primary responsibility of the safety of orphan sources of which it has notice;
 - (d) establish programmes aimed at detecting orphan sources in places where such sources are generally suspected to be;
 - (e) draw up appropriate response plans and measures for handling orphan sources; and
 - (f) give specialized technical advice and assistance to persons not normally involved in operation subject to radiation protection requirements and who suspect the presence of a orphan source.
42. (1) Subject to the provisions of any other written law, the Commission shall develop requirements and guidelines to be additionally met before the issuance of mining and milling license in relation to uranium, thorium or other radioactive ores.
- (2) The requirements under subsection (1) shall be in respect of-

(a) exploration;
 (b) removal from site for testing and evaluation;

Reportsonlossofaradiationsources.

Miningandmilling
licences.

Orphansources.

- (c) excavation activities at site;
- (d) siting and construction of the mine;
- (e) operation of the mine and processing facility;
- (f) transport;
- (g) waste management; and
- (h) decommissioning of the mine.

PART VII- SAFETY OF NUCLEAR FACILITIES AND DEC OMMISSIONING

43.(1) A person who intends to carry out an activity related to a nuclear facility shall obtain an authorization from the Commission.

(2) An authorization under this section shall be required for the siting, construction, operation and decommissioning of a nuclear facility.

(3) The Commission shall prescribe requirements in connection with the authorization, review and assessment of a nuclear facility, including the requirements for-

- (a) nuclear facility design;
- (b) siting;
- (c) construction;
- (d) commissioning;
- (e) operation;
- (f) decommissioning;
- (g) remediation; and
- (h) such other activity relating to construction and operation, as may be necessary.

(4) The authorization requirements prescribed under subsection (3) shall make a distinction between-

- (a) nuclear power plants;
- (b) research reactors; and
- (c) other nuclear facilities.

(5) An application for authorization under this section shall be in such form and manner as may be prescribed.

(6) The Commission shall ensure that the general public is informed and consulted at appropriate steps during the authorization process of a nuclear facility.

Authorization of nuclear facilities.

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(7) Any person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding one million shillings or to an imprisonment for a term not exceeding two years, or to both.

44. The authorized persons shall bear the primary responsibility for ensuring safety and security of the facility

and **an** activities associated with it.

45. (1) A person applying for a site authorization for a nuclear power plant shall prepare a site evaluation report in accordance with subsection (2).

(2) The site evaluation report shall contain-

- (a) the frequency and severity of external natural and human induced events and phenomenon that could affect the safety of the facility;
- (b) the foreseeable evolution of natural and man made factors in the region that may have a bearing on safety for a time period that encompasses the projected lifetime of the facility;
- (c) the hazards associated with external events that are to be considered in the design of the facility, including the potential combined effects of hydrological, hydrogeological and meteorological conditions;
- (d) additional matters relating to safety such as the storage and transport of nuclear material;
- (e) the possible non-radiological impact of the facility due to chemical or other material releases and the potential for explosion and dispersal of chemical products;
- (f) the potential for interactions between nuclear and non-nuclear effluents;
- (g) the potential radiological impacts in operational states and conditions on people in the region, including impacts that could lead to emergency measures or potential impacts outside the territory of the Republic of Kenya;

Responsibility for
afety of facilities and
dactivities.

Site evaluation.

beyond
the level assessed in a previous site evaluation; and

- (i) such other matters as may be prescribed.

46.(1) Before granting a construction authorization for a nuclear power plant, the Commission shall review and assess-

- (a) the competence and capability of the applicant or authorized person to meet relevant authorization requirements during construction and operation;
- (b) the site evaluation, prepared pursuant to the provisions of this Act, to confirm its acceptability, and related information needed for the design of the proposed facility;
- (c) the potential environmental impact of the proposed facility;
- (d) the basic design of the proposed facility, to confirm that it can meet relevant safety, security and physical protection requirements;
- (e) the management systems of the applicant or authorized person;
- (f) research and development plans related to demonstration of the acceptability of the design; and
- (g) arrangements for decommissioning and management of radioactive waste including financial mechanisms therefor.

Authorization for construction and operations.

(2) During construction, the Commission shall review and assess-

- (a) the development of the facility design through documentation submitted by the authorized person to determine its continued acceptability; and
- (b) the progress of research and development activities related to demonstration of the acceptability of the design.

(3) Before granting an operation authorization for a nuclear power plant, the Commission shall review and assess-

- (a) the commissioning programme and, if needed, establish a schedule for further review and assessment prior to operation;
- (b) as-built design and construction and manufacturing quality of the facility;
- (c) results of non-nuclear commissioning tests;
- (d) limits and conditions for operation during commissioning, with a staged approach, if necessary;
- (e) provisions for radiation protection;
- (f) adequacy of operating instructions and procedures, especially the main administrative procedures, general operating procedures and emergency operating procedures;
- (g) recording and reporting systems;
- (h) arrangements for training and qualification of facility personnel, including staffing levels and fitness for duty requirements;
- (i) management systems for operation;
- (j) emergency preparedness programme;
- (k) accounting measures for nuclear and radioactive material;
- (l) adequacy of physical protection measures;
- (m) arrangements for periodic testing, maintenance, inspection and control of modifications and surveillance;
- (n) arrangements for decommissioning and management of radioactive waste;
- (o) results of commissioning tests; and
- (p) limits and conditions for operation.

(4) During operation of a nuclear power reactor, the Commission shall require-

- (a) the review and assessment of changes in operational limits and conditions of significant safety related modifications, to be conducted prior to their authorization; and

- (b) periodic reviews in every ten years or as the Commission may otherwise direct, of the operator's compliance with relevant terms and conditions related to the facility's safety and physical protection.

47. (1) An authorized person shall prepare in accordance with subsection (2), a technical preservation programme for any research reactor that enters into or continues in a state of extended shutdown.

(2) The technical preservation programme for research reactors shall include-

- (a) arrangements for ensuring that the reactor core remains subcritical;
- (b) procedures and measures to disconnect, dismantle and preserve the systems that are to be taken out of operation or temporarily dismantled;
- (c) modification of the safety analysis report and the operational limits and conditions;
- (d) arrangements for dealing with the fuel and radioactive waste;
- (e) regular surveillance and periodic inspection testing and maintenance to ensure that the safety performance of structures, systems and components does not degrade;
- (f) revised emergency planning arrangements;
- (g) staffing requirements to undertake the tasks necessary to keep the reactor in a safe condition and to maintain knowledge about the research reactor; and
- (h) arrangements for the security of the reactor and the facility.

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(3) The Commission shall ensure the safe management of a reactor that is in extended shutdown but the operator of such facility shall not be the responsibility of the Commission.

48. (1) The Commission shall-

- (a) establish requirements for the decommissioning of nuclear facilities where radioactive substances are produced, used or stored in accordance with subsection (2);

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- (b) require the applicant for an authorization to-
 - (i) construct and operate a nuclear facility to
 - perform a baseline survey of the site, including radiological conditions, prior to construction; and
 - (ii) develop information prior to construction for comparison with the end state after decommissioning;
 - (c) ensure that relevant documents and records prepared by the authorized person are maintained for a specified period of time before, during and after decommissioning;
 - (d) establish criteria for determining when a nuclear facility or part of a facility must be permanently shutdown; and
 - (e) evaluate the end state of the facility after decommissioning activities have been completed to ensure that relevant regulatory requirements have been met.
- (2) The requirements referred to under subsection (1)
- (a) shall include-
- (a) safety and environmental criteria, including conditions on the end state of decommissioning;
 - (b) limits and conditions for the removal of regulatory controls for facilities containing radionuclides;
 - (c) criteria for the clearance of radioactive material during and following decommissioning; and
 - (d) such other requirements as may be prescribed.
- (3) A facility shall not be released by the Commission from regulatory control until the authorized person has demonstrated that the end state in the decommissioning plan has been reached and that any other additional regulatory requirements have been met.
49. (1) At the design stage of facilities, the applicant for an authorization to construct and operate a facility shall prepare an initial decommissioning plan for approval by the Commission.
- (2) The plan prepared under subsection (1) shall be commensurate with the type and status of the facility and

Decommissioningplan.

the hazards that may be associated with its decommissioning.

(3) The Commission shall-

- (a) ensure that the public and interested parties are provided with an opportunity to review and comment upon the decommissioning plan prior to its approval;
- (b) require the authorized person to provide periodic reviews and updates of the decommissioning plan and shall specify the maximum time interval between such reviews and updates;
- (c) where specific circumstances result in significant changes to the initial decommissioning plan, require the authorized person, to revise and update the plan to reflect these changed circumstances and submit it to the Commission for approval;
- (d) require that a final decommissioning plan be prepared and submitted for approval prior to the implementation phase of decommissioning activities; and
- (e) ensure that a programme to implement and monitor compliance with remaining regulatory requirements has been established for sites where decommissioning has been completed but where authorizations or restrictions on future use of the site remain.

(4) The Commission shall, upon completion of decommissioning, ensure that appropriate records for confirmation of the completion of decommissioning activities are maintained in accordance with the approved decommissioning plan including the records of the premises and of the disposal of radioactive waste and material.

50. An authorized person shall, in implementing decommissioning activities at a facility, be responsible for

- (a) ensuring safety, security and environmental protection, including any activities conducted by contractors or subcontractors;

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- (b) preparing the safety and environmental impact assessments necessary for implementation of the decommissioning plan;**
- (c) establishing a record keeping system of the key issues and modification during the lifetime of the facility that may have an impact on decommissioning;
- (d) ensuring that the baseline survey of the site is performed in an effective and timely manner;
- (e) ensuring that new or untried methods for decommissioning are justified, addressed and submitted for approval by the Commission;
- (f) informing the Commission within two months of a decision to permanently shut down a facility and submitting an application to decommission the facility, together with a proposed final decommissioning plan, within two years of permanent cessation of operation;
- (g) in the case of deferred dismantling, ensuring that the facility has been placed and will be maintained in a safe configuration and will be adequately decommissioned in the future;
- (h) establishing and maintaining a management organization and personnel resources to ensure that decommissioning can be completed safely, including ensuring that responsible persons possess the necessary skills, expertise and training for safe decommissioning;
- (i) establishing and maintaining emergency planning arrangements commensurate with the associated hazards and reporting significant incidents to the Commission; and
- (j) ensuring that adequate financial arrangements are made for all stages of the decommissioning process.

51. (1) An applicant for an authorization to construct and operate a nuclear facility shall ensure that adequate financial resources will be available when needed to cover the costs associated with safe decommissioning, including management of the resulting waste.

Financesfor.decommissioning.

(2) The amount of the financial resources to be made available for decommissioning activities shall-

- (a) be commensurate with a facility specific cost estimate;
- (b) be changed if the cost estimate increases or decreases; and
- (c) be reviewed as part of the periodic review of the decommissioning plan.

PART VIII-
DECOMMISSIONING FUND.

52. There is established a fund to be known as the Decommissioning Fund.

53. The Fund shall consist of-

- (a) all moneys appropriated by Parliament, or paid into, or allocated to the Fund under the provisions of any other Act;
- (b) domestic and foreign grants; and
- (c) any property or amount of money received or acquired from any other legal sources.

54. The Fund shall be administered by the Commission. Establishment of

55. The functions of the Fund shall be to cater for- the Fund.

- (a) decommissioning under the Act; and
- (b) the management of radioactive waste and spent fuel. Sources of funds for the Fund.

56. (1) The Cabinet Secretary, in consultation with the National Treasury, may make regulations on-

- (a) the administrative operations of the Fund; and
- (b) the financial requirements for decommissioning.

(2) Regulations made under subsection (1) shall be laid before Parliament

PART IX-
EMERGENCY PREPAREDNESS AND
RESPONSE

57. The Commission in liaison with the national body or authority responsible for responding to national emergencies shall-

A- Administration Qf.

the Fund.

Functions of the

Fund.

Othamatterstobeprescribed.

Role of the

Commission.

(a) define the criteria for classification of emergencies

(b) review and approve emergency preparedness and

response plans developed by the licensee; and

(c) advise and provide technical support on radiological emergencies and nuclear accidents.

58. The Commission shall not authorize any activity, operation, facility, or possession or use of a source unless an appropriate emergency preparedness and response plan has been developed by the applicant and approved by the Commission.

59. (1) A non-site and off-site emergency plans shall be prepared in the prescribed form and manner for any facility, activity, or source that could give rise to a need for emergency intervention.

Failure by an applicant
to develop a plan: gao
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(2) The emergency preparedness and response plans

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shall take into account-

(a) an assessment of the nature, likelihood and potential magnitude of resulting damage, including the population and territory at risk from an accident, malicious act or incident; and

Emergency preparedness -
and response.

(b) the results of any accident analyses and any lessons learnt from the experience of incidents and accidents that have occurred in connection with similar activities.

(3) Emergency preparedness and response plans shall be periodically reviewed as directed by the Commission.

60. The authorized persons shall, in the event of a nuclear or radiological emergency, implement the emergency preparedness and response plan as approved by the Commission.,

61. (1) In the event of a nuclear or radiological emergency that poses a risk that radioactive contamination could spread beyond the boundaries of the Republic of Kenya, the Commission shall immediately notify the International Atomic Energy Agency and the relevant authorities of any State which is or may be physically affected by a release that could be of a radiological nature.

(2) The Commission shall serve as the point of contact for providing any information or assistance regarding

Implementational of emergency preparedness and response plan.

Trans-boundary nuclear or radiological emergency.

nuclear or radiological emergencies under the terms of relevant international instruments.

62. Every authorized person shall regularly inform the public about the significant facts of its emergency preparedness and response plan.

PART X—TRANSPORTATION OF RADIOACTIVE

Information to public about plan.

MATERIAL

63. (1) The Commission shall make regulations for transportation of radioactive material in accordance with international standards.

(2) In developing the regulations under subsection (1), the Commission shall take into account the need to—

- (a) protect persons, property and the environment;
- (b) meet the obligations under relevant international instruments ratified or acceded to by Kenya;
- (c) support international cooperation in the safe, secure and peaceful uses of nuclear science and technology; and
- (d) support international efforts to prevent the proliferation of nuclear weapons, explosive and radiological dispersal devices.

Transport of radioactive material.

64. (1) A person shall not—

- (a) undertake the design of any packaging or package;
- (b) operate or maintain any packaging or package; or
- (c) transport, or cause or permit to be transported in any packaging or package,

any nuclear material or radiation source, otherwise than in accordance with the provisions of this Act.

(2) A person who contravenes the provisions of subsection (1) commits an offence and is liable on conviction, to a fine not exceeding five million shillings or imprisonment for a term not exceeding five years or to both.

65. Without prejudice to any other provision under this Act, every carrier of a consignment shall exercise reasonable care to ensure that in the course of the transport of a consignment, no injury to health or any damage to property or to the environment is caused.

Offences relating to transport.

Duty to exercise reasonable care; yacrier.

66. (1) Every carrier shall establish a radiation protection transport plan for application during transportation of nuclear material or radiation sources.

Radiation protection transport plan.

(2) The transport plans shall-

- (a) take into account the nature and extent of the measures to be taken in respect of the likelihood and magnitude of radiation exposures or environmental contamination; and
- (b) adopt a structured and systematic approach including consideration of the interfaces between the mode of transport and other activities.

(3) Any person who contravenes this section commits an offence and shall be liable on conviction to a fine not exceeding five millions shillings or to an imprisonment for a term not exceeding five years, or both.

67. (1) In the event of an accident or incident during the transport of a nuclear material or radiation source, a carrier shall apply its radiation protection transport plan as approved by the Commission.

(2) Emergency response procedures shall take into account the information of other dangerous substances that may result from the reaction between the contents of a consignment and the environment in the event of an accident.

68. Every carrier shall ensure that-

- (a) during transport every consignment is segregated from any other dangerous goods; and
- (b) radioactive and fissile properties, explosiveness, flammability, pyrophoricity, chemical toxicity and corrosiveness are taken into account in the packing, labelling, marking, placarding, storage and transport of a package in order to become compliant with the provisions of this Act or any other written law relating to dangerous goods in each of the States through which the consignment is transported.

Emergency response in transportation.

PART XI:-EXPORT AND IMPORT CONTROLS

69. (1) The provisions of this Part shall be applied to ensure control over the export and import of nuclear

Segregation of material.

Controlled items.

materials, nuclear related equipment and technology all of which shall be referred to as controlled items for the purposes of this Part.

(2) The Commission shall establish a list of controlled items subject to export or import controls and in accordance with international obligations and commitments of the Republic of Kenya.

70. (1) A person shall not export a controlled item

without prior license by the Commission.

(2) The following criteria shall be applied in granting a license for export of a controlled item-

- (a) the receiving State has disclosed the use of and made a binding commitment to use the controlled item for peaceful uses only
- (b) level of physical protection of the controlled item is consistent with those set forth in the Convention on the Physical Protection of Nuclear Materials;
- (c) International Atomic Energy Agency Safeguards shall be applicable in relation to the controlled item;
- (d) transfers of previously exported controlled items to a third State are subject to the prior approval by the Commission; and
- (e) any reprocessing of the controlled item is subject**

Export licensing
area.

to the approval by the Commission.

71. A person shall not import a controlled item unless the-

- (a) import of the item is not otherwise prohibited under this Act and
- (b) designated recipient of the controlled item is holder of a valid authorization issued by the Commission.

72. Any person who-

- (a) receives, possesses, uses, transfers, transports, disposes or is perses a nuclear material or radiation source and which cause is likely to
caused death or serious injury to any person or
damage to property or environment or

- (b) carries, sends, or moves nuclear material or radiation source, into or out of Kenya,

Without lawful authority or contrary to the prescribed manner, commits an offence and is liable on conviction to imprisonment for a term not exceeding ten years without

an option of a fine..

PART XII—RADIOACTIVE WASTE AND SPENT FUEL MANAGEMENT

73.(1) This Act shall apply to the management of any radioactive waste and spent fuel resulting from civilian applications in the Republic of Kenya, but shall not apply to waste that contains only naturally occurring radioactive material, unless it is declared a radioactive waste for the purposes of this Act by the Commission.

(2) The following principles shall be applied at all

stages in the management of radioactive waste—

- (a) that people, property and the environment are adequately protected against radiological and other hazards;
 - (b) generation of radioactive waste is kept to the minimum practicable;
 - (c) interdependence among the different steps of radioactive waste and spent fuel management is taken into account;
 - (d) protective measures for radioactive waste and spent fuel management in the Republic of Kenya are implemented in a manner that reflects internationally recognized criteria, standards and guidance;
 - (e) biological, chemical and other hazards that may be associated with radioactive waste and spent fuel management are adequately addressed;
 - (f) criticality and removal of residual heat generated during radioactive waste and spent fuel management are adequately addressed;
 - (g) actions imposing a reasonably predictable impact on future generations greater than those permitted for the current generation are avoided; and
- (b) appropriate funding arrangements are in place.

Scope and
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nciples of radioacti
ve waste and spent
fuel management.

Responsibility for a
radioactive waste
management

management.

74.(1) The primary responsibility for ensuring the safety and security of radioactive waste and spent fuel in a radioactive waste or spent fuel management inside or outside a facility throughout its life rests with the holder of the relevant authorization.

(2) Every authorized person shall be responsible for the safe management of radioactive waste generated by the activities for which the authorization is issued and shall take all necessary measures to ensure that-

- (a) generation of the activity and volume of radioactive waste are kept to the minimum practicable level by suitable design, operation and decommissioning of its facilities;
- (b) radioactive waste is managed by appropriate classification, segregation, treatment, conditioning, storage or disposal, and maintaining records of such activities;
- (c) management of radioactive waste is not unnecessarily delayed; and
- (d) information sought by the Commission is furnished as requested.

75. The Commission shall establish a classification of radioactive waste to ensure a safe and secure management of radioactive waste in Kenya.

76.(1) Every authorized person shall submit a waste management plan to the Commission for approval.

(2) A waste management plan shall provide for the appropriate management of radioactive waste and shall include-

- (a) an outline of the processes generating waste, and a description of the waste generated;
- (b) a description of the environment into which the waste will be discharged or disposed, including the basic radiological characteristics;
- (c) a description of the proposed system for waste management including the facilities and procedures involved in the handling, transportation, treatment, storage or disposal of radioactive waste;

Classification of

radioactive waste

Waste

management plan.

- (d) prediction of environmental concentrations of radionuclide and radiation dose to people from the proposed waste management practices, including demonstration of adherence to the radiation protection requirements under this Act;
 - (e) a program for monitoring the concentration of radionuclides in the environment and assessment of radiation dose to members of the public arising from the waste management practices;
 - (f) emergency plans for dealing with accidental releases, or circumstances which might lead to, uncontrolled releases of radioactive waste, to the environment;
 - (g) a schedule for reporting on the operation and results of monitoring and assessments required by this plan;
 - (h) a plan for decommissioning the operation and the associated waste management facilities and remediation of the site; and
 - (i) a system of periodic assessment and review of the adequacy and effectiveness of procedures instituted under the plan to ensure currency and to take account of potential improvements consistent with best practicable technology.
- (3) For the purposes of this section "radioactive waste" includes spent fuel.

77.(1) A person shall not store, manage, transfer or dispose of radioactive waste without an authorization from the Commission.

(2) An application for an authorization to store, manage, transfer or dispose of radioactive waste shall be in the prescribed form and manner.

(3) Every authorized person shall take appropriate measures to keep generation of radioactive waste and its environmental impact to the minimum practicable!

(4) Any person who contravenes subsection (1) commits an offence, and is liable upon conviction to a fine not exceeding five million shillings or to an imprisonment for a term not exceeding five years, or to both.

Offences relating to radioactive waste and spent fuel.

78.(1) An authorized person shall ensure that-

(a) radioactive waste is collected, segregated, characterized, and packaged at the point of origin in accordance with the classification and packaging system established under this Act ;

(1:) these selected radioactive waste packages are compatible with planned storage or disposal options, and also meet the prescribed radioactive waste acceptance criteria; and-

(c) the waste packages **are** designed and produced so that radionuclides- are confined under both normal and accident conditions.

(2) In erecting a conditioning process, an authorized person shall ensure that safety will be improved from the use of a matrix material and compatibility of the radioactive waste with the selected materials and processes.

79.(1) An authorized person shall ensure that radioactive waste activities **is** from authorized

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discharged to the environment unless-

(a) such discharge is within the limits specified in the authorization and is carried out in a controlled manner using authorized methods; or

(b) the activity discharged is confirmed to be below clearance level.

{2) An authorized person, during the operational stages of any nuclear material under his responsibility, shall

a) keep radioactive discharges below the authorized

limits as is reasonably achievable;

(b) monitor and record the discharges of radionuclides with sufficient detail and accuracy to demonstrate compliance with the authorized discharge limits and to permit estimation of the exposure of the critical group;

(c) report discharge to the Commission at intervals as specified by the Commission and as may be determined from time to time; and

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radioactivewa.qre.

(3) Every authorized person shall ensure that non-radiological hazard of the released radioactive waste comply with the requirements of any other written law concerning those hazards.

(4) Every authorized person shall ensure radioactive waste is stored in such a way as to protect persons, property and the environment.

80. An applicant for an authorization for a radioactive waste and spent fuel management facility shall-

- (a) meet safety requirements for the protection of persons, property and the environment by appropriate planning for the siting, design, construction, operation and maintenance of the respective facility, including provisions for eventual retrieval of the waste;
- (b) design the facility-
 - (i) on the basis of assumed conditions for its normal operation and assumed incidents or accidents;
 - (ii) for the likely period of storage, with the potential for degradation being taken into account;
 - (iii) in such a way that the waste can be retrieved whenever required;
 - (iv) so that it is adequately ventilated to exhaust any gas generated in normal conditions or under anticipated accident conditions;
 - (v) so that measures to prevent, detect and control fires are incorporated as required; and
 - (vi) so that radiological monitoring and visual inspection is readily possible.

Authorization to operate a radioactive waste and spent fuel management facility.

81. Radioactive waste and spent fuel generated outside the territory of Kenya shall not be imported into Kenya for any purpose.

82. (1) Radioactive waste and spent fuel generated within the Republic of Kenya may be exported only upon authorization by the Commission.

(2) Radioactive waste and spent fuel shall not be authorized for export to a destination south of latitude 60 degrees for storage or disposal.

Radioactivewasteimports.

Radioactivewasteexports.

(3) The Commission shall apply the following criteria in determining export authorization for radioactive waste and spent fuel, whether-

- (a) the importing State has been notified of the transfer of radioactive waste and spent fuel prior to its receipt and has consented to such transfer;
- (b) movement of the intended exported material shall be conducted in conformity with relevant international obligations in all States through which the material will transit; and
- (c) the importing State possesses the regulatory infrastructure and technical capacity necessary to manage the exported radioactive waste and spent fuel.

(4) If an authorized export of radioactive waste or spent fuel cannot be completed in compliance with the provisions of this Act, the radioactive waste or spent fuel shall be re-imported into the Kenya unless alternative safe and secure arrangements can be made.

PART XIII-SAFEGUARDS

83. (1) All the nuclear material in Kenya shall be used exclusively for peaceful purposes and in accordance with this Act.

(2) No director in direct control of nuclear weapons or other nuclear related explosive devices, the manufacture or otherwise acquisition of such weapons or devices and the seeking of assistance in the manufacture of nuclear weapons or other nuclear related explosive devices, shall be allowed in Kenya.

(3) Any person who contravenes the provisions of subsections (1) or (2) commits an offence, and is liable upon conviction to a fine not exceeding ten millions shillings or to an imprisonment for a term not exceeding twenty years or to both.

84. (1) The Commission shall-

- (a) ensure the implementation of the obligations of Kenya arising from ratified international treaties and conventions;
- (b) collect and provide to the applicable international entity information required to fully implement Kenya's international and national obligations;

Peaceful uses.

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Application of safeguards.

- (c) facilitate, entry into, access within the Republic of Kenya and offer necessary support to designated inspectors of the applicable international entity; and
- (d) ensure all agencies of the Government of Kenya and authorized persons cooperate fully with the applicable international and national entities in application of safeguard measures.

(2) The Commission shall cooperate with the International Atomic Energy Agency in the implementation of the safeguards under this Part.

85. (1) An Inspector of the Commission and a designated inspector of the applicable international entity shall have access to any facility or location as provided for under the safeguards regime with a view of conducting verification activities.

(2) Any person performing activities subject to the safeguards regime shall allow the Commission and designated inspectors of the applicable international entity to carry out any measures they consider necessary for achieving compliance with safeguard measures.

86. The Commission shall be responsible for approving the designation to Kenya of inspectors proposed by the applicable international entity.

87. The Commission shall make regulations to ensure the effective implementation of safeguards in Kenya by establishing and implementing-

- (a) a system for the measurement of nuclear material;
- (b) a system for the evaluation of measurement accuracy;
- (c) procedures for reviewing measurement differences;
- (d) procedures for carrying out physical inventories;
- (e) a system for evaluation of unmeasured inventories;
- (f) a system of records and reports for tracking nuclear material in inventories and flows;
- (g) procedures for ensuring that accounting procedures and arrangements are being operated correctly; and

Safeguard inspections

Designation of inspectors.

State system of accounting for and control of nuclear material.

- (h) procedures of reporting to the applicable international entity.

88. Any person intending to carry out research and development activities related to the nuclear fuel cycle, shall prior to commencement, provide to the Commission information and data necessary for compliance subject to the Safeguards Agreement or any protocol thereon.

Information requirements for research and development activities related

to the nuclear fuel cycle.

PART XIV-

NUCLEAR SECURITY AND PHYSICAL PROTECTION

89. (1) The Commission shall coordinate the threat assessment to be done by the national security institutions.

(2) Every authorized person shall ensure security measures are put in place in accordance with the threat identified under subsection (1).

90. (1) An authorized person is primarily responsible for ensuring the physical protection of nuclear material, radioactive material and related facilities under its control.

Threat assessment process 11.

(2) Where there has been the theft, threat of theft or loss of nuclear material, an authorized person shall-

- (a) notify the Commission without delay of the incident and circumstances thereof
- (b) provide a written report, including particulars, to the Commission as soon as practicable after giving notice; and
- (c) provide the Commission with any additional information as may be requested.

(3) The Commission shall issue guidelines on protection from attempted or actual unauthorized access or for illicit trafficking of nuclear and radioactive materials or sabotage of their associated facilities.

Primary responsibility for physical

protection-

91. (1) In the event of an unlawful taking or threat of unlawful taking of nuclear material, the Commission shall take appropriate steps as soon as possible to inform other States that may be affected of the circumstances of the incident and the relevant international entity.

(2) The Commission shall be the lead authority responsible for coordinating recovery and response in the event of any theft or unlawful taking of nuclear material.

International cooperation and assistance.

(3) In the event of an unlawful taking of nuclear material, the Commission shall be responsible for determining the necessary coordination, cooperation and assistance arrangements in the recovery and protection of such materials as agreed with any State or international organization that so requests.

(4) The Commission shall provide information on incidents involving unlawful taking of nuclear material, equipment and technology to the applicable international entity.

92. (1) A person shall not interfere with, remove, alter, damage, or render ineffective any security measures stipulated to secure nuclear or radioactive material except for lawful removal, transport or technical service.

(2) Any person who contravenes the provisions of subsection (1), commits an offence.

93. (1) Any information issued to or sought by the Commission under this Act is confidential and shall not be disclosed unless with the written authority of the Commission.

(2) An authorized person shall not disclose any information that is prejudicial to security of a nuclear facility or nuclear material unless with the written authority of the Commission.

Restrictions.

(3) No person shall use information relating to the security of a nuclear facility or material for an unlawful purpose or to further an unlawful purpose or intent.

(4) A person who contravenes the provisions of this section commits an offence, and is liable upon conviction to a fine not exceeding five millions shillings or to an imprisonment for a term not exceeding five years or both.

94. A person who uses or damages a nuclear facility, or interferes in whatever manner with its operation with the intent to cause death or bodily harm, damage to property or environment by compelling a person to do or refrain from doing an act commits an offence and is liable upon conviction, to a fine not exceeding ten millions shillings or to an imprisonment for a term not exceeding twenty years or both.

Protection of confidential information.

Offences relating to nuclear facilities.

PART XV—MISCELLANEOUS PROVISIONS

95. An employer or principal shall be liable for an offence committed by an employee or agent under this Act, unless the employer or principal proves that the employee or agent was not acting in instruction or authority.

Offences by employees and agents.

96. Where a contravention of any of the provisions of this Act is made for which no fine or penalty is expressly stated, the persons so defaulting shall, on conviction, be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding twelve months or to both.

General penalty.

97. The Director of Public Prosecutions may, on the request of the Commission, designate any officer of the Commission to be a public prosecutor for the purposes of prosecuting offences under this Act.

98. (1) The Commission shall, in consultation with the Cabinet Secretary, make regulations for the better carrying out of the objects of this Act.

(2) Without prejudice to the generality of subsection (1), such regulations may be made in respect of—

- (a) the development, production and use of nuclear energy;
- (b) mining, production, refinement, conversion, enrichment, processing, reprocessing, possession, import, export, use, packaging, transport, management, storage, or disposal of nuclear substance;
- (c) design, inspection during production or installation, production, possession, storage, import, export, use, decommissioning, or disposal of prescribed equipment;
- (d) production, possession, transfer, storage, import, export, use, disclosure or restriction of disclosure of prescribed information;
- (e) applications for an authorization under this Act;
- (f) design, siting, construction, installation, operation, maintenance, modification, decommissioning, abandonment or disposal of a nuclear facility or part of a nuclear facility;

Appointment of prosecutors.

Regulations.

(g) protection of persons, property and the environment, from many risks associated with the facilities and activities carried out under this Act;

(h) non-ionizing radiation exposure

(i) doses of radiation, including-

(i) establishing classes of persons and prescribing, in respect of each class, the radiation dose limits to which members of that class may be exposed;

(ii) prescribing the circumstances under which any or all members of a class of persons may be exposed to a dose of radiation exceeding any of the limits prescribed for that class of persons; and

(iii) establishing measures for protection of persons from exposure to radiation;

(j) protection of nuclear energy works, including prescribing-

(i) duties that may be performed by a person employed in a nuclear facility or other place in which a nuclear substance is produced, used, possessed, packaged, transported, stored or disposed of and the manner and circumstances in which the person's terms and conditions of employment may be varied;

(ii) the information that a person so employed is required to provide to their employer or to a dosimetry service provider in order to measure or monitor the dose of radiation to which the person is exposed;

(iii) medical examinations or tests and the circumstances under which they are to be conducted on persons so employed; and

(iv) measures that must be undertaken by employers of persons so employed and licensees of such a nuclear facility;

(k) prescribing the fees that may be charged by the Commission, on information, products and services or for the programme that it establishes and maintains;

(l) prescribing the fees payable for various authorizations;

- (m) qualifications for, and the training and examination of, inspectors and other persons authorized under this Act;
- (n) measures to ensure the maintenance of national security and compliance with Kenya's international obligations in the development, production and use of nuclear energy and the production, use, possession, packaging, transport, storage and disposal of nuclear substances, prescribed equipment and prescribed information;
- (o) measures to implement Kenya's international obligations regarding the development, production and use of nuclear energy, including prescribing the manner in which the conditions under which access to a nuclear facility, nuclear substance or prescribed information shall be granted to prescribed persons;
- (p) establishing requirements to be complied with by any person who possesses, uses, packages, transport, stores or disposes of a nuclear substance or prescribed equipment or who locates, designs, constructs, installs, operates, maintains, modifies, decommissions or abandons a nuclear facility or nuclear-powered vehicle;
- (q) the form of certificates of inspectors and designated officers;
- (r) the procedure for certifications and decertification of prescribed equipment;
- (s) establishing classes of nuclear facilities;
- (t) the provision of any radiation protection services;
- (u) radioactivity levels in food stuff and consumer products;
- (v) licensing process for export or import of controlled items including end-user controls;
- (w) the form of notices required by this Act and the manner in which they are to be given;

sferred to the
Kenya Nuclear
Regulatory
Commission

- (x) the exemption of any activity, persons, class of persons or quantity of nuclear substance, temporarily or permanently, from the application of this Act or the regulation thereunder; and
- (y) prescribe anything that is required to be prescribed by this Act and generally any other matter necessary for carrying out the purposes of this Act.

PART XVI-TRANSITIONAL PROVISIONS

99. (1) The Radiation Protection Act, is repealed.

(2) Notwithstanding the provisions of subsection (1)

- (a) in as far as applicable, the contractual obligation existing pursuant to the Radiation Protection Act shall be preserved;
- (b) any subsidiary legislation issued before the commencement of this Act shall, in as far as is not inconsistent with this Act, remain in force until repealed or revoked by subsidiary legislation under the provisions of this Act and shall, for all purposes, be deemed to have been made under this Act;
- (c) a licence issued by the former Radiation Protection Board shall be deemed a corresponding licence issued under this Act for its unexpired duration;
- (d) members of the former Radiation Protection Board and the Chief Radiation Protection Officers shall continue to serve in the Commission in the corresponding positions as Commissioners and Director General respectively until the expiry of their unexpired term.

100. The Kenya Nuclear Regulatory Commission established under section 5 of this Act, shall be the successor to the Radiation Protection Board established by the Radiation Protection Act and subject to this Act, all rights, duties, obligations, assets and liabilities of the Radiation Protection Board existing at the commencement of this Act shall be automatically and fully tran-

Repeal of Cap. 243.

Commission to be
successor of Radiation
Protection Board.

Cap. 243

Cap. 243

Transfer of Staff.

101. (1) A person who, immediately before the commencement of this Act, was an employee of the Government and who was serving at the former Radiation Protection Board shall, upon the commencement of this Act, be deemed to be an employee of the Commission.

(2) Despite subsection (1), all the employees of the Government who were serving at the former Radiation Protection Board shall upon the commencement of this Act be given an option to elect to serve in the Commission or be redeployed in the Public Service within a period of one year.

Secondment of Staff.

102. (1) In addition to the staff appointed under section 10, a public officer may be seconded to the Commission from any other public body, upon the request by the Commission as may be necessary for the performance of the functions of the Commission.

(2) A public officer seconded to the Commission shall, during the period of secondment, be deemed to be an officer of the Commission and shall be subject only to the direction and control of the Commission.

SCHEDULE

(s.11)

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE COMMISSION

1. (1) The Chairperson or a commissioner of the Commission other than *ex-officio* commissioners shall, subject to the provisions of this Schedule, hold office for a period of four years, on such terms and conditions as may be specified in the instrument of appointment, but shall be eligible for re-appointment for one further term.

Tenure of office.

(2) The commissioners of the Commission shall be appointed at different times so that the respective expiry dates of the commissioners' terms of office shall fall at different times.

2. (1) No person shall be appointed or shall, as a commissioner of the Commission if such person is-

- (a) a member of parliament or a county assembly; or
- (b) a person who holds any office or position, in a political party.

3. (1) A commissioner other than an *ex-officio*

commissioner may-

- (a) at any time resign from office by notice in writing to the Cabinet Secretary;
- (b) be removed from office by the Cabinet Secretary on recommendation of the Commission if the commissioner -
 - (i) has been absent from three consecutive meetings of the Commission without its permission;
 - (ii) is adjudged bankrupt or enters into a composition or scheme of arrangement with his creditors;
 - (iii) is convicted of a corruption or economic crime or of a criminal offence involving dishonesty, fraud or moral turpitude or any other criminal offence under any law punishable with imprisonment that amounts to a felony under the Laws of Kenya;

Disqualification

of commissioners.

Vacationoffice.

(iv) is of unsound mind or is incapacitated by prolonged physical or mental illness for a period exceeding six months; or

(c) is otherwise unable or unfit to discharge his functions.

4. (1) The Commission shall meet at least once in every three months.

Meetings.

(2) Notwithstanding subparagraph (1), the Chairperson may, and upon requisition in writing by at least five commissioners, convene a special meeting of the Commission at any time for the transaction of the business of the Commission.

(3) Unless three quarters of the total commissioners of the Commission otherwise agree, at least fourteen days' written notice of every meeting of the Commission shall be given to every commissioner of the Commission.

(4) The Chairperson shall preside at every meeting of the Commission and in his absence, the commissioners present shall elect one of their number, from among the commissioners appointed under this section 8, to preside and the person so elected shall have all the powers of the chairperson with respect to that meeting and the business transacted thereat.

(5) Unless a unanimous decision is reached, a decision on any matter before the Commission shall be by a majority of the votes of the commissioners present and voting, and in case of an equality of votes, the Chairperson or the person presiding shall have a casting vote.

(6) Subject to subparagraph (4), no proceedings of the Commission shall be invalid by reason only of a vacancy among the commissioners thereof.

(7) Nothing in this paragraph shall prevent the Chairperson from authorizing a commissioner to use live telephone conferencing or other appropriate communication or multimedia facilities to participate in any meeting of the Commission where, prior to the meeting, the commissioner, by notification to the Chairperson, has requested for such authorization.

5. (1) The Commission may establish such committees as it may deem appropriate to perform such functions and responsibilities as it may determine.

Committee of the
Commission.

(2) The Commission shall appoint the Chairperson of a committee established under subparagraph (1) from among its commissioners.

(3) The Commission may where it deems appropriate, co-opt any person to attend the deliberations of any of its committees.

(4) All decisions by the committees appointed under subparagraph (1) shall be ratified by the Commission.

6. (1) The Secretary to the Commission shall be responsible to the Chief Executive Officer for-

(a) arranging the business of the Commission's meetings;

(b) keeping records of the proceedings of the Commission;

(c) performing such other duties as the Commission may direct.

Secretary to the Commission.

(2) The Commission may in the absence of the Secretary appoint any commissioner of the Commission or staff of the Corporation to temporarily perform the functions of the Secretary under subparagraph (1).

7. (1) A commissioner who has an interest in any contract, or other matter presented at a meeting shall at the meeting and as soon as reasonably practicable after the commencement, disclose the fact thereof and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.

(2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A commissioner of the Commission who contravenes subparagraph (1) commits an offence and is liable to a fine not exceeding two hundred thousand shillings.

Disclosureofinterest.

8. Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal may be entered into or executed on behalf of the Commission by any person generally or specially authorized by the Commission for that purpose.

Contracts and instruments.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to repeal the Radiation Protection Act (Cap. 243) and provide for a comprehensive regulatory framework, for radiation and nuclear safety, nuclear security and safeguards to control radiation sources, nuclear materials and associated waste. The Bill aims to protect the people, property and the environment from the harmful effects of exposure to radiation and to provide for nuclear safety and non-proliferation in accordance with national and international obligations.

Part I of the Bill deals with preliminary matters. Clause 3 sets out the object and purpose of the Bill which shall be to regulate safe, secure and peaceful development, production, possession, use, storage, disposal, transport or handling of nuclear and radioactive materials and other activities generating ionizing radiation.

Part II of the Bill deals with the establishment of the Kenya Nuclear Regulatory Commission as an independent and autonomous body, domiciled in a neutral administrative Government Ministry, from the user Ministries, in line with Kenya's development agenda.

Part I of the Bill deals with the financial provisions in relation to the Commission including the funds of the Commission, the financial estimates and the accounts and audit of the books of account of the Commission.

Part IV of the Bill gives in detail, the manner in which the commission shall exercise regulatory control including notifications, authorizations and inspections.

Part V of the Bill provides the framework for the radiation protection and related medical and intended radiological exposures with trans-boundary effects, among others.

Part VI of the Bill deals with the safety of radiation sources and facilities.

Part VII of the Bill provides for the authorization of nuclear facilities and the safety of nuclear facilities and decommissioning.

Part VIII of the Bill establishes the Decommissioning Fund whose primary objective is to cater for decommissioning and the management of radioactive waste and spent fuel.

Part IX of the Bill deals with the emergency preparedness and responses in the event of radiological emergencies and nuclear accidents.

Part X deals with the transportation of radioactive material in line with the best practice, to prevent the proliferation of nuclear weapons, explosives and radiological dispersal devices.

Part XI of the Bill addresses the issue of illicit trafficking.

Part XII of the Bill deals with the discharge of radioactive waste and spent fuel management and the related offences.

Part XIII of the Bill deals with the regime of safeguards and safeguard inspections, in compliance of Kenya's international obligations.

Part XIV of the Bill deals on nuclear security and physical protection.

Part XV of the Bill deals with miscellaneous matters. Clause 98 gives the Commission, power to make regulations, in consultation with the Cabinet secretary, for better carrying out of the objects of the Act.

Part XVI of the Bill deals with the repeal of the Radiation Protection Act (Cap. 243) and the saving and transitional provisions in respect of the repealed Act.

The Schedule deals with the provisions as to the conduct of business and affairs of the Commission. Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms .

The Bill does not contain any provisions limiting any fundamental rights and freedoms.

Statement on how the Bill concerns County governments

The Bill does not affect the functions of County governments as set out in the Fourth Schedule to the Constitution and is therefore not a Bill concerning counties.

Statement that the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill shall occasion additional expenditure of public funds.

Dated the 1st November, 2018.

ADENDUALE,

Leader of the Majority Party.